IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2106 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI CHHOTALAL VERMA

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2 & 3.

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/04/2000

ORAL JUDGEMENT

1. Petitioner-Sureshbhai Chhotalal Verma, owner of Maruti Adhesive and Chemicals, Ahmedabad, came to be detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential

Commodities Act, 1980 ("PBM Act" for short), by virtue of an order passed by the State Government in exercise of powers under Section 3 of the PBM Act on November 30, 1999. The said order was passed with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies of essential commodities like petroleum products essential to the community.

2. The said order is challenged by the petitioner/detenu on various grounds. However, learned Senior Counsel, Mr. Y.N. Oza, appearing for the petitioner has pressed into service the only ground of delay in considering the representation by the Central Government. To support his argument, he has relied on the affidavit-in-reply filed on behalf of Union of India. The affidavit-in-reply states that a representation dated March 16, 2000 made in favour of the detenu was received by the Central Government on March 24, 2000. The said representation was rejected by the Central Government on April 5, 2000, after considering parawise remarks of the State Government and other relevant records. Mr. Oza submitted that the lapse of time between March 24, 2000 and April 5, 2000 has remained unexplained. This delay in deciding the representation has resulted into infringement of right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. Mr. Oza, therefore, urged that the petition may be allowed as the continued detention of the detenu is rendered bad in law by virtue of the delay.

3. The petition is opposed by learned Assistant Government Pleader, Mr. K.T. Dave, on behalf of respondents No.1, 2 and 3, whereas the petition is opposed on behalf of respondent No.4-Union of India by learned Additional Central Government Standing Counsel, Ms. Davawala.

4. Having regard to rival side contentions, it is as clear as broad day light from the affidavit-in-reply that there is a delay in considering the representation made on behalf of the detenu. The representation was received, admittedly, by the Central Government on March 24, 2000 and it was decided, admittedly, on April 5, 2000. What transpired in between these two dates is not tried to be explained in the affidavit-in-reply. It appears that the representation remained unattended for so many days. This non-consideration of the

representation for a period of about 11 days can be said to have infringed the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. In this regard, the decision in the Apex Court case of Rajammal v. State of Tamil Nadu & Another, AIR 1999 SC 684 may be made use of. There an unexplained delay of five days in considering and disposing of the detenu's representation was held to be fatal to the detention and sufficient to vitiate the detention. In the instant case, there is a delay of about 11 days and, therefore, the petition deserves to be allowed as the continued detention of the detenu is rendered bad in law.

5. In view of the above discussion, the petition is allowed. The impugned order of detention dated November 30, 1999, passed against the detenu is hereby quashed. The detenu-Sureshbhai Chhotalal Verma is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs. Direct service is permitted.

[A. L. DAVE, J.]

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